

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 419 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KOLVADA GRAM PANCHAYAT

Appearance:

MR ST MEHTA AGP for Appellant.

NOTICE SERVED for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/10/2000

ORAL JUDGEMENT

This appeal is preferred by the defendant-State of Gujarat against the judgment and order dated 27th August, 1981, passed by the learned District Judge, Mehsana, in Regular Civil Appeal No. 180/79, arising of the judgment and order dated 3rd October, 1979, passed by

the learned Civil Judge (SD) Mehsana, in Regular Civil Suit No. 121/74.

The plaintiff is Kolavada Gram Panchayat. It appears that several persons had made applications to the Collector, Mehsana, for allotment of land in village Kolavada for construction of residential house. However, no open land was available in the village site. The Collector, therefore, in exercise of the powers conferred under sub-section (4) of section 96 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as 'the Act'), made an order on 29th January, 1974 (Ex.44), directing that the land bearing S.No. 878/3, admeasuring 5-Acre-35 Gunthas, and the land bearing S.No. 878/2, admeasuring 4-Acre-28 Gunthas, situated in the Sim of village Kolavada, be resumed for the purposes of house site. Feeling aggrieved, the Gram Panchayat instituted the above referred Regular Civil Suit No. 121/74 in the Court of the learned Civil Judge (SD) Mehsana, and challenged the aforesaid order dated 29th January, 1974. It was contended that earlier on 29th November, 1972, the Panchayat had passed a Resolution that the land bearing S.No. 878/2 being Khalvad land (thrashing land) for the villagers, be not converted into house site and accordingly the Collector by order dated 29th January, 1974 (Ex.43) had directed to set aside the earlier order made by the Prant Officer on 3rd May, 1973, and had directed to call for a fresh proposal from the Taluka Development Officer and the Mamlatdar, Vijapur. The impugned order dated 29th January, 1974, was made contrary to the order Ex. 43, was malafide, illegal, and required to be set aside. The suit was duly contested by the defendants by filing a written statement at Ex.20. It was contended that there were several applications received for allotment of house site and no other house site being available, the Collector in exercise of the powers conferred under section 96 (4) of the Act, had decided to resume the above referred lands of S.Nos. 878/2 and 878/3, and to convert the same as house site. Considering the topography of the village, the aforesaid two pieces of land were found to be suitable for housing purposes.

The learned trial Judge rejected the allegation that the impugned order was malafide, improper, illegal or void. The learned trial Judge also held that the suit was barred by the Bombay Revenue Jurisdiction Act, 1876, and thus dismissed the same. Feeling aggrieved, the Gram Panchayat preferred Regular Civil Appeal No. 180/79 before the District Court, Mehsana. The learned District Judge held that the powers under section 96 (4) of the

Act had application to open site or waste, vacant or grazing land alone. The land bearing S.No. 878/2 was being used as a Khalvad land (thrashing floor) and was not covered under section 96 (4) of the Act. The Collector, therefore, had no jurisdiction to resume such land under section 96 (4) of the Act. The impugned order thus was made without the authority of law and was a nullity. A suit against such order would lie and bar under the Bombay Revenue Jurisdiction Act, 1876, would not apply. Feeling aggrieved, the State Government has preferred the present appeal.

The following questions of law have been framed by this court :

- (1) Whether the appellate court was right in law in holding that the impugned order passed by the Collector, Mehsana, dated 29-1-1974 is illegal, void and ineffective in view of section 96 (4) of the Gujarat Panchayats Act and also under section 38 of the Bombay Land Revenue Code ?
- (2) Whether the appellate court was right in law in holding that the civil court has jurisdiction to entertain and try the suit ?
- (3) Whether the appellate court is right in law in coming to the conclusion that the suit is maintainable in view of section 96 of the Gujarat Panchayats Act ?

Section 96 (1) of the Act empowers the State Government to vest in a Panchayat, open site the waste, vacant or grazing lands or public roads, streets, bridges, ditches, etc. or any other property in the Gram or Nagar, as the case may be, vesting in the Government. Sub-section (4) thereof empowers the Government to resume any such open site or waste, vacant or grazing lands vested by Government in a Panchayat to resume at any time such site or land if it is required by it for any public purposes. The question that arises is whether the land bearing S.No.. 878/2, the subject matter of the lis, can be said to be covered by sub-section (4) of section 96 of the Act. The said sub-section refers to 'any open site or waste, vacant or grazing land'. It is undisputed that the land bearing S.No. 878/2 was being used as Khalvad (thrashing land) by the villagers. The same, therefore, can not be said either to be a 'grazing land', or 'waste land' or 'vacant land'. The words 'open site' or 'waste,

vacant or grazing land' have not been defined in the Act and the said words, therefore, should take their natural meaning. As observed hereinabove, the land bearing S.No. 878/2 being used by the villagers can not be said to be 'waste, vacant or grazing land'. But the same having not been constructed upon, would be covered by the words 'open site'. The otherwise open land would not cease to be open land/open site merely because it is being used for some specific purpose. In my view, therefore, the Collector was not acting without the authority of law in ordering to resume the land bearing S.No. 878/2. The next question whether an order made in exercise of power under section 96 (4) of the Act can be challenged before the civil court without availing of a remedy of appeal provided under the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code'). Section 203 of the Code provides for an appeal to a superior officer against any order made by the Revenue Officer. It can not be gainsaid that the Collector is a 'Revenue Officer' as defined under section 3 (1) of the Code. An appeal against the order made by the Collector, therefore, should lie to an officer superior (in the present case, the Development Commissioner). There are two fold express bar against the civil proceedings under the Bombay Revenue Jurisdiction Act, 1876. Section 4 of the said Act expressly bars the jurisdiction of the civil court in respect of the matters enumerated thereunder. Clause (fb) thereof reads as under :

Suit to set aside or modify decision determining village site or abadi made by the Collector or a survey officer under the Bombay Land Revenue Code, 1879 (Bom. V of 1879) or by any Revenue Officer under any other law for the time being in force.

Thus, the jurisdiction of the civil court in respect of an order made by the Collector determining the village site is expressly barred. Section 11 of the said Act reads as under :

S.11 : SUITS NOT TO BE ENTERTAINED UNLESS PLAINTIFF HAS EXHAUSTED RIGHT OF APPEAL :

No civil court shall entertain any suit against the Government on account of any act or omission of any Revenue Officer unless the plaintiff first

proves that previously to bringing his suits he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suits it was possible to present.

That is, unless the plaintiff proves that he has availed of the remedy of appeal available under the law for the time being in force, no civil court shall entertain suit against the order made by any Revenue Officer. In the present case, it is an admitted fact that the plaintiff had not availed of the remedy of appeal against the impugned order of the Collector available under the Code. Thus, the suit was not competent and was rightly dismissed by the learned trial Judge.

In the matter of DALLUMIYA LALMIYA MALEK VS STATE OF GUJARAT (1971 GLR 668), the Division Bench of this court was examining challenge to the order made by the Mamlatdar pursuant to an inquiry made under section 37 (2) of the Code. The court held that - " Until a civil court in a competent suit makes inconsistent declaration and gives relief, the order would be a competent order which attracts both the bar of limitation as well as of exhaustions of alternative remedy of appeal as envisaged by section 11 of the Revenue Jurisdiction Act."

The questions raised are answered accordingly.

The appeal succeeds. The judgment and order dated 27th August, 1981, of the learned District Judge, Mehsana, passed in Regular Civil Appeal No. 180/79 is quashed and set aside. The order dated 3rd October, 1979, of the learned Civil Judge (SD) Mehsana, passed in Regular Civil Suit No. 121/74 is restored. The appeal is allowed with costs.

(MS R.M.DOSHIT J)

JOSHI